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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. A-1100

MICHAEL C. SHERDON,
Petitioner,

vs.

PAULA UIHLEIN CARMONA, also known as PAULA UIHLEIN HANSEN, and doing business as VISTA HERMOSA FARM, BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, Conservator of the ESTATE OF PAULA UIHLEIN CARMONA, et al.,
Respondents.

PETITION NOT PRINTED

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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COMMENT ON STATEMENT OF QUESTIONS INVOLVED

1. Respondent denies the factual implications of alleged question (1). The Court of Appeal (Appendix A to Petition) accurately stated the factual question as follows:

"The trial court found upon substantial evidence in the record: following the death of a daughter in July 1965 Carmona suffered

a severe emotional disability, affecting her entire behavior and radically changing her manner of living. This resulted in her being greatly susceptible to influence by others. She made a series of very unsuccessful financial transactions. The Sherdons, who had come into Carmona's life a few months before the tragedy of the daughter's death, acquired a close relationship with Carmona, one of confidence and trust, and knowing of her impaired condition, pressured and unduly influenced her to enter into many financial transactions and provide them with money and property. The court found from the evidence during Carmona's disability period she had no capacity to contract and all the transactions which the Sherdons induced Carmona to enter into were void for fraud and undue influence; Carmona was awarded an equitable interest in property obtained by the Sherdons with her money. Also, Carmona was awarded actual money damages totaling $76,876.25 to make her whole, and punitive damages of $25,000 for the Sherdons' fraud and malice.

"The trial court held upon substantial evidence Carmona owned an undivided half-interest in certain horses and she was awarded a lien on Michael Sherdon's interest in them, for services and board (Civ. Code §§ 3051, 3062).

"The balance of appellants' complaints regarding the conduct of the trial and the events since trial, are unmeritorious. The evidentiary rulings were proper, within the law's framework and the trial court's discretion. There was no impropriety regarding disqualification of judges.

"Our review of the record leads us to conclude the result is just, and the appellants wrongfully took advantage of Carmona. The general damages were reasonable and based on evidentiary grounds. In view of appellants' conduct, we cannot say as a mat-

ter of law the punitive damages awarded were out of line or were unreasonable."

On January 26, 1972 the Supreme Court of California denied a hearing.

2. As to state action against foreign nationals or foreign property, it is obvious from the petition and from the record that the question was not involved.

3. As to discrimination by the State courts respondents again refer to the Court of Appeal decision, Appendix "A" to petition for certiorari.

ARGUMENT IN OPPOSITION TO PETITION

I. *Non-Compliance with Rules.*

Respondents note for the record petitioner's non-compliance with the rules of the court as follows:

A. The petition was not filed on time (Rule 34 (2)). Time was extended to June 24 but petition was filed August 7, 1972.

B. Notice of docketing does not indicate contents of record (Rule 21 (2)).

C. The jurisdictional statement is defective as follows:

(1) It does not show the statutory provision believed to confer jurisdiction on the Supreme Court (Rule 23 (b) (iii)).

(2) It does not show at what stage of the proceedings in the Superior Court the alleged federal questions were raised; the way in which they were passed on by the court; no reference is made to specific portions of the record; there is an attempt to set forth material in Appendix "B" but such portions do not show that a federal question was affirmatively presented to the trial court; neither is there any showing by appendix or

reference to the raising of such question or determination thereof by the California Court of Appeal or California Supreme Court; the opinion of the Court of Appeal (Appendix "A") contains no reference to any federal question.

It is apparently petitioner's contention that federal questions were raised in a request for the trial court to take judicial notice, in a written request for findings, in a motion for new trial, and in a petition for hearing in the California Supreme Court.

None of these documents is set forth in the body of the petition or attached as an appendix so that there is in fact no specific showing of how, when or whether a federal question was presented to the state courts. (Rule 23 (f)).

(3) There is not appended a copy of the judgment or decree in question. (Rule 23 (j)).

II. *Due Process of Law was not Denied.*

Both the decision of the California Court of Appeal, Appendix "A" to petition, and the argument of petitioner show that petitioner's arguments, if they can be classified at all, relate to the following:

A. A claimed denial of due process.

B. A claimed infringement of the Treaty of Guadalupe Hidalgo. (Discussed *infra,* III).

As to the due process argument, the following authorities are pertinent:

It is necessary that the federal question be real and substantial and that a decision thereof should be essential to a disposition of the issues presented in the case.

Durley v. *Mayo,* 351 U.S. 277.

Martin v. *Walton,* 368 U.S. 25.

A judgment resting on grounds adequate to sustain it, independent of any federal question, is not reviewable.

Wilson v. *Loews, Inc.*, 355 U.S. 597.

Black v. *Cutter's Laboratory*, 351 U.S. 292.

Louisville & Nashville Railroad v. *Woodford*, 234 U.S. 46.

Atlantic Coast Line v. *Mims*, 242 U.S. 532.

American Surety Co. v. *Baldwin*, 287 U.S. 156.

The only power of the Supreme Court of the United States over state court judgments is to correct them to the extent that they incorrectly adjudge federal rights.

Herb v. *Pitcairn*, 324 U.S. 117.

Lisenba v. *California*, 314 U.S. 219.

Fourteenth amendment does not permit Supreme Court review of every ruling of a state trial court.

Buchalter v. *New York*, 319 U.S. 427.

No review is available on questions of local practice and procedure.

Zorach v. *Clauson*, 343 U.S. 306.

Questions of evidence or judicial notice are not reviewable.

Wear v. *Brewster*, 245 U.S. 154.

Federal question must have been raised in trial court.

Bailey v. *Anderson*, 326 U.S. 203.

Penn. Railroad Co. v. *Illinois Brick Co.*, 297 U.S. 447.

Raising federal question after judgment, as in motion for new trial, is too late.

Hanson v. *Denckla*, 357 U.S. 235.

Special and important reasons are required before certiorari shall issue.

Rice v. *Sioux City Mem. Park*, 349 U.S. 70.

Layne & Bowler Corp. v. *Western Well Works, Inc.*, 261 U.S. 387.

III. *The Treaty of Guadalupe Hidalgo is not involved.*

Reference in the petition to the Treaty of Guadalupe Hidalgo is based upon the premise (page 13 of the petition) as follows:

"The trial court made a judgement *(sic)* on the pleadings in a pretrial motion on the Mexican issues; and struck down the petitioner's second cause of action (re: Mexico); and ruled in favor of the respondent: stating in effect, that since a necessary third party to this action, was not joined; the court did not have jurisdiction of the issue."

Relative to the problem of conditionally necessary parties respondents observe that the California statutory law and the Federal rules are substantially the same.

California Code of Civil Procedure, Section 389, provides:

"§ 389. A person is an indispensable party to an action if his absence will prevent the court from rendering any effective judgment between the parties or would seriously prejudice any party before the court or if his interest would be inequitably affected or jeopardized by a judgment rendered between the parties.

"A person who is not an indispensable party but whose joinder would enable the court to determine additional causes of action arising out of the transaction or occurrence involved in the action is a conditionally necessary party.

"When it appears that an indispensable party has not been joined, the court shall order the party asserting the cause of action to which he is indispensable to bring him in. If he is not then brought in, the court shall dismiss without prejudice all causes of action as to which such party is indispensable and may,

in addition, dismiss without prejudice any cause of action asserted by a party whose failure to comply with the court's order is wilful or negligent.

"When it appears that a conditionally necessary party has not been joined, the court shall order the party asserting the cause of action to which he is conditionally necessary to bring him in if he is subject to the jurisdiction of the court, if he can be brought in without undue delay, and if his joinder will not cause undue complexity or delay in the proceedings. If he is not then brought in, the court may dismiss without prejudice any cause of action asserted by a party whose failure to comply with the court's order is wilful or negligent.

"Whenever a court makes an order that a person be brought into an action, the court may order amended or supplemental pleadings or a cross-complaint filed and summons thereon issued and served.

"If, after additional conditionally necessary parties have been brought in pursuant to this section, the court finds that the trial will be unduly complicated or delayed because of the number of parties or causes of action involved, the court may order separate trials as to such parties or make such other order as may be just."

Federal Rule 19 as revised in 1969 deals with "persons to be joined if feasible." If they can be made parties the court will order them joined.

The presence of conditionally necessary parties is not necessary to the court's jurisdiction.

Bank of California v. *Superior Court*,
16 Cal. 2d 516, 106 P. 2d 879

Bowles v. *Superior Court*,
44 Cal. 2d 574, 283 P. 2d 704

In any event the applicability of the Treaty of Guadalupe Hidalgo is not shown from the petition. A procedural question of joinder or non-joinder of conditionally necessary parties does not involve any federal or constitutional question but is merely a matter of local procedure.

The quoted section of the treaty appears to involve only the inviolability of the International Boundary line, and not to limit the trial of transistory actions.

CONCLUSION

So far as set forth in the petition we gather only that petitioner is dissatisfied. We find nothing in the petition to show that a federal question was raised in the trial court, or what the alleged federal question was other than a vague claim of denial of due process.

There is no showing that petitioner's claims of error were not fully and fairly passed upon by the California Court of Appeal or that it was in any way derelict in determining that petitioner is bound by the adverse determination of fact by the trial court, fully reviewed and examined by the Court of Appeal.

Respectfully submitted,

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BY /s/ Duane J. Carnes
DUANE J. CARNES